

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, *et al.*,**

Plaintiffs,

EDDIE BERNICE JOHNSON, *et al.*,

Plaintiff-Intervenors,

V.

GREG ABBOTT, in his official capacity as
Governor of the State of Texas, *et al.*,

Defendants.

3:21-CV-00259-DCG-JES-JVB
[Lead Case]

UNITED STATES OF AMERICA,

Plaintiff,

V.

STATE OF TEXAS, *et al.*

Defendants.

Case No. 3:21-CV-00299-DCG-JES-JVB
[Consolidated Case]

**THOMAS BRYAN AND ERIC WIENCKOWSKI'S RESPONSE IN OPPOSITION TO
MALC'S MOTION FOR LEAVE FOR LIMITED DISCOVERY OUT OF TIME**

Thomas Bryan and Eric Wienckowski respectfully submit this Response in Opposition to the Mexican American Legislative Caucus's (MALC) Motion for Leave for Limited Discovery Out of Time (ECF 433).

Due to the time-sensitive nature of this litigation this Court, seven months ago, set a fact discovery deadline of July 15, 2022. ECF 433. On the day that fact discovery concludes in this case, MALC asks this Court to extend the discovery period so that Plaintiffs can take at least

twenty-eight more depositions. *See* ECF 433. In moving for this discovery extension, MALC erroneously claims that Thomas Bryan and Eric Wienckowski have “agreed” to be deposed. ECF 433 at 2.

Thomas Bryan is a demographer who was hired as a consulting expert by the law firm Butler Snow LLP to assist the firm in advising its client—the Chairman and his staff of the House Redistricting Committee of the Texas House of Representatives, including the General Counsel to the Texas House—in state legislative, board of education, and congressional reapportionment and redistricting matters. *See* ECF 390-1. Butler Snow LLP explicitly hired Mr. Bryan in anticipation of litigation. ECF 390-1. After Mr. Bryan was retained by Butler Snow LLP, he hired Mr. Wienckowski to assist him in providing advice and consulting to the firm and its clients. ECF 390-1. Mr. Bryan and Mr. Wienckowski provided services only as directed by Butler Snow to assist the firm in rendering legal advice and consultation to the firm’s clients. ECF 390-2.

Plaintiff the United States served Mr. Bryan and Wienckowski with subpoenas and subsequently moved to compel compliance with the subpoenas. ECF 385; 392. Mr. Bryan and Mr. Wienckowski have filed a response to this motion to compel, claiming the same various privileges and protections Mr. Bryan and Mr. Wienckowski asserted in their original objections and responses to the subpoenas. ECF 390.

Mr. Bryan and Mr. Wienckowski have maintained since the onset of this litigation that any document in their possession is protected by numerous overlapping protections and privileges. *See* generally ECF 390. Any deposition testimony from Mr. Bryan or Mr. Wienckowski would be likewise subject to the same privileges and protections. Accordingly, Mr. Bryan and Mr. Wienckowski have not and would not agree to appear for any deposition in this case, absent a court order requiring them to do so.

Moreover, MALC's counsel has never contacted Mr. Bryan or Mr. Wienckowski's counsel to ask if they would agree to appear for a deposition. Nevertheless, MALC now inexplicably states that Mr. Bryan and Mr. Wienckowski have "agreed" to be deposed. ECF 433. The only contact Mr. Bryan or Mr. Wienckowski received regarding any depositions came from Dan Freeman, an attorney for the Department of Justice. Counsel for Mr. Bryan and Mr. Wienckowski told Mr. Freeman that Mr. Bryan and Mr. Wienckowski would be willing to work with Mr. Freeman on identifying possible deposition dates, only if the court were to "extend the deadline for fact discovery and the court allows discovery from these witnesses." *See* Ex. 1. Accordingly, contrary to MALC's assertions in its motion, Mr. Bryan and Mr. Wienckowski have never "agreed" to appear for depositions in this case. ECF 433.

MALC's motion should therefore be denied because it is based on material factual inaccuracies.

Dated: July 15, 2022

Respectfully submitted,

/s/Scott K. Field

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CERTIFICATE OF SERVICE

I hereby certify on July 15, 2022, copies of the foregoing Response to the MALC's Motion for Leave for Limited Discovery Out of Time was served on counsel of record through the Court's CM/ECF service.

/s/Scott K. Field

Scott K. Field